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BEFORE THE ARIZONA CORPORATION COMMISSION

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BOB STUMP, Chairman
 GARY PIERCE
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AZ CORP COMMISSION
 DOCKET CONTROL

ORIGINAL

In the matter of:

DOCKET NO. S-20804A-11-0208

CRAIG RANDAL MUNSEY, an unmarried
 man,

MARKETING RELIABILITY CONSULTING,
 LLC (d.b.a. MRC LLC), an Arizona limited
 liability company,

DENVER ENERGY EXPLORATION, LLC, a
 Texas limited liability company,

MICHAEL LEE CHRISTOPHER
 (CRD#2695315), an unmarried man

Respondents.

SECURITIES DIVISION'S
 EXCEPTIONS
 TO THE RECOMMENDED OPINION
 AND ORDER

Assigned to Administrative Law
 Judge Marc E. Stern, Arizona Corporation Commission

DOCKETED

MAY 08 2014

DOCKETED BY

Pursuant to A.A.C. R14-3-110(B), the Securities Division ("Division") of the Arizona

Corporation Commission ("Commission"), submits its exceptions to the Recommended Opinion and Order dated April 29, 2014 ("ROO"). The Division supports the findings of fact and conclusions of law by Administrative Law Judge Stern with the exception of one conclusion of law and related ordering paragraph contained in the ROO, and recommends specific changes to the ROO for the reasons set forth below. Furthermore, the Division requests a modification to the language in the restitution ordering paragraphs for collection purposes as recommended by Office of the Attorney General, Bankruptcy & Collection Enforcement Section.

I. Analysis/Legal Argument

The ROO recommends Findings of Fact supporting the existence of a Summary Order to Cease and Desist issued in May 2010 by the Pennsylvania Securities Commission ("PSC")

1 against Respondent Denver Energy Exploration, LLC ("DEE") for violations of Pennsylvania
2 securities laws, and a subsequent Order regarding the same from July 2010 ("Pennsylvania
3 Orders"). See Findings of Fact, ¶¶ 40, 155. The ROO also recommends Findings of Fact
4 supporting that the Pennsylvania Orders had not been disclosed to offerees or investors by DEE
5 or Respondent Craig Randall Munsey ("Munsey"). See ROO Findings of Fact, ¶¶ 41, 42. The
6 ROO recommends a finding of fraud pursuant to A.R.S. § 44-1991 against DEE and Respondent
7 Michael Lee Christopher ("Christopher") as a result of the failure to disclose the Pennsylvania
8 Orders, and a recommends a finding that this was a material fact. See ROO Findings of Fact, ¶
9 178; Conclusions of Law, ¶ 9. The Division does not dispute these findings, as they are clearly
10 consistent with case law that holds that the failure to disclose a prior order for securities
11 violations is a violation of the anti-fraud provisions of the securities laws. See *e.g. State ex rel*
12 *Corbin v. Goodrich*, 151 Ariz. 118, 124, 726 P.2d 215, 221 (App. 1986); *SEC v. Merchant*
13 *Capital, LLC*, 483 F.3d 747, 771 (11th Cir. 2007); *S.E.C. v. Levine*, 671 F. Supp. 2d 14, 27-28
14 (D.D.C. 2009); *SEC v. Paro*, 468 F. Supp. 635, 646 (N.D.N.Y. 1979).

15 The ROO recommends that Munsey and his entity, Respondent Marketing Reliability
16 Consulting, LLC ("MRC"), acted as a dealer and/or salesmen within the meaning of A.R.S. § 44-
17 1801(9) and (22), offered and sold the investments to four of the investors at issue, and offered
18 the investment to an Arizona resident in May 2011. See ROO Findings of Fact, ¶¶ 23, 26-29, 77-
19 79; Conclusions of Law, ¶¶ 2-3. Again, the Division does not dispute these findings.

20 However, the ROO fails to recommend a finding of fraud against Munsey and MRC
21 under A.R.S. § 44-1991 for these two Respondents' failure to disclose the Pennsylvania Orders,
22 which is contrary to law. The ROO recommends a finding that the Pennsylvania Orders should
23 have been disclosed only by DEE and Christopher, but states that Munsey and MRC were not
24 aware of the Pennsylvania Orders until the Division brought the current action, and therefore
25 finds no fraud in Munsey and MRC's failure to disclose the Pennsylvania Orders. See ROO
26 Findings of Fact, ¶ 178, Conclusions of Law, ¶ 9. The finding that Munsey and MRC lacked

1 knowledge of the Pennsylvania Orders during the time they sold the investments at issue is
2 irrelevant.

3 “[I]t [is] not necessary for [a] seller to have intentionally misstated material facts or to
4 have intentionally omitted any material facts” in order to violate the anti-fraud provisions of the
5 Arizona Securities Act (“Securities Act”). *Rose v. Dobras*, 128 Ariz. 209, 214, 624 P.2d 887,
6 892 (App. 1981). “A seller of securities is strictly liable for the misrepresentations or omissions
7 he makes.” *Garvin v. Greenbank*, 856 F.2d 1392 (9th Cir. 1988) (interpreting A.R.S. § 44–
8 1991(A)(2)). Arizona courts have held that state of mind, including knowledge and scienter
9 concerning a material omission or misrepresentation, is not an element of a violation of A.R.S. §
10 44–1991(A)(2). *See e.g. Aaron v. Fromkin*, 196 Ariz. 224, 227, 994 P.2d 1039, 1042 (App.
11 2000) (holding that the issue of the speaker’s knowledge is irrelevant to a finding of securities
12 fraud); *Rose*, 128 Ariz. at 214, 624 P.2d at 892. In fact, the elements of common law fraud, one
13 of which is showing that the speaker knew the misrepresentation was false or was ignorant of the
14 truth, are not required to prove securities fraud under the Securities Act. *See Aaron*, 196 Ariz. at
15 227, 994 P.2d at 1042 (citing to the elements of common law fraud in *Wells Fargo Credit Corp.*
16 *v. Smith*, 166 Ariz. 489, 494, 803 P.2d 900, 905 (App. 1990)).

17 Strict liability for failure to disclose a material fact such as a previous order for securities
18 violations is not only consistent with the Securities Act’s statutory language, but necessary to
19 advance the remedial goals of the Securities Act. This includes a broad application of the
20 provisions of the Securities Act to deter fraud and protect the public. *See* 1951 Ariz. Sess. Laws,
21 ch. 18, § 20. *Caruthers v. Underhill*, 2014 WL 1327971, *9 (App. April. 3, 2014) (“[T]he
22 legislature has directed a liberal construction of the Arizona Securities Act to protect the public
23 interest.”). The focus of the Securities Act places the burden of disclosure of material facts that
24 would constitute a fraudulent omission *on the promoter*, whether that is a salesman or issuer.
25 *Rose*, 128 Ariz. at 212, 624 P.2d 887, 890. This is because the promoter is in a better position
26 than the investor to have all relevant information, and investors are under no obligation to

1 perform diligence to discover fraud. *Trimble v. American Sav. Life Ins. Co.*, 152 Ariz. 548, 553
2 733 P.2d 1131, 1136 (App. 1986) (finding that the anti-fraud provisions of the Securities Act “do
3 not require investors to act with due diligence To the contrary, defendants have an
4 affirmative duty not to mislead potential investors. [citation omitted]. This requirement not only
5 removes the burden of investigation from an investor, but places a heavy burden upon the offeror
6 not to mislead potential investors in any way.”)

7 Finally, the Division requests a modification to the language in the restitution ordering
8 paragraphs for collection purposes as recommended by Office of the Attorney General,
9 Bankruptcy & Collection Enforcement Section.

10 **II. Conclusion**

11 For the foregoing reasons, the Division asks the Commission to enforce the strict liability
12 anti-fraud provisions of the Securities Act by finding Munsey and MRC liable for fraud for
13 failure to disclose the Pennsylvania Orders, which the ROO recommends was a material fact.
14 Furthermore, the Division requests a modification to the language in the restitution ordering
15 paragraphs for collection purposes as recommended by Office of the Attorney General,
16 Bankruptcy & Collection Enforcement Section. Accordingly, the Division asks that the
17 Commission adopt the Division’s Proposed Amendment #1, attached hereto as Exhibit A,
18 proposing deletions and additions that are consistent with (1) a finding that Munsey and MRC are
19 liable for fraud related to non-disclosure of the Pennsylvania Orders; and (2) the
20 recommendations of the Office of the Attorney General, Bankruptcy & Collection Enforcement
21 Section.

22 RESPECTFULLY SUBMITTED this 8th day of May, 2014.

23
24 
25 Stacy Luedtke
26 Attorney for the Securities Division of the Arizona Corporation
Commission

1 ORIGINAL AND THIRTEEN (13) COPIES of the foregoing
2 filed this 8th day of May, 2014, with:

3 Docket Control
4 Arizona Corporation Commission
5 1200 W. Washington St.
6 Phoenix, AZ 85007

7 COPY of the foregoing hand-delivered
8 this 8th day of May, 2014, to:

9 Mr. Marc E. Stern
10 Administrative Law Judge
11 Arizona Corporation Commission/Hearing Division
12 1200 W. Washington St.
13 Phoenix, AZ 85007

14 COPY of the foregoing mailed
15 this 8th day of May, 2014, to:

16 Robert D. Mitchell
17 Sarah K. Deutsch
18 Jamie Gill Santos
19 MITCHELL & ASSOCIATES
20 Viad Corporate Center, Suite 2030
21 1850 North Central Avenue
22 Phoenix, AZ 85004
23 *Attorney for Respondent Denver Energy Exploration, LLC*

24 Craig Randal Munsey
25 Marketing Reliability Consulting, LLC
26 2303 North 44th Street, Suite 14-1071
Phoenix, AZ 85008
Individually proceeding pro se and as Manager of Marketing Reliability Consulting, LLC

By: 

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EXHIBIT A

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SECURITIES DIVISION PROPOSED AMENDMENT #1

TIME/DATE PREPARED:

MATTER: Denver Energy Exploration, LLC, et al. AGENDA ITEM NO. _____

DOCKET NO: S-20804A-11-0208 OPEN MEETING DATE: _____

FINDINGS OF FACT

Paragraph 178, Page 24, lines 1-4:

DELETE: With respect to the allegations of fraud in this proceeding, we find that the Order of PSC should have been disclosed by Respondents DEE and Mr. Christopher. There is no evidence that Respondents Mr. Munsey and MRC were made aware of the PSC Order at any time until after the Division brought its action herein.

INSERT: With respect to the allegations of fraud in this proceeding, we find that the Order of PSC should have been disclosed by Respondents DEE, Mr. Christopher, Mr. Munsey, and MRC.

Paragraph 178, Page 24, lines 11-12:

DELETE: Therefore, based on the record, we find that Respondents DEE and Mr. Christopher committed fraud in violation of A.R.S. § 44-1991.

INSERT: Therefore, based on the record, we find that Respondents DEE, Mr. Christopher, Mr. Munsey, and MRC committed fraud in violation of A.R.S. § 44-1991.

CONCLUSIONS OF LAW

Paragraph 9, Page 25, lines 8-10:

DELETE: Respondents DEE and Christopher committed fraud in the offer and sale of unregistered securities, engaging in transactions, practices or a course of business which involved untrue statements and omissions of material facts in violation of A.R.S. § 44-1991.

INSERT: Respondents DEE, Christopher, Munsey, and MRC committed fraud in the offer and sale of unregistered securities, engaging in transactions, practices or a course of business which involved untrue statements and omissions of material facts in violation of A.R.S. § 44-1991.

1 **ORDER**

2 Page 25, lines 22-24:

3 DELETE: IT IS FURTHER ORDERED that pursuant to the authority granted to the
4 Commission under A.R.S. § 2032, Respondents Denver Energy Exploration, LLC and
5 Michael Lee Christopher shall cease and desist from their actions described herein above in
violation of A.R.S. § 44-1991.

6 INSERT: IT IS FURTHER ORDERED that pursuant to the authority granted to the
7 Commission under A.R.S. § 2032, Respondents Denver Energy Exploration, LLC, Michael
8 Lee Christopher, Craig Randal Munsey, and Marketing Reliability Consulting, LLC shall
cease and desist from their actions described herein above in violation of A.R.S. § 44-1991.

9 Page 28, lines 1-5:

10 DELETE: IT IS FURTHER ORDERED that if Respondents Craig Randal Munsey,
11 Marketing Reliability Consulting, LLC, Denver Energy Exploration, LLC, and Michael Lee
12 Christopher fail to comply with this Order, the amount of \$420,407.25, less any legal offsets
13 pursuant to A.A.C. R14-4-308(C), shall be in default and immediately due and payable
without notice or demand. The acceptance of any partial or late payment by the Commission
is not a waiver of default by the Commission.

14 INSERT: IT IS FURTHER ORDERED that if Respondents Craig Randal Munsey, Marketing
15 Reliability Consulting, LLC, Denver Energy Exploration, LLC, and Michael Lee Christopher
16 fail to comply with the requirement to make an offer of rescission pursuant to this Order, the
17 Respondents shall be jointly and severally liable for restitution in the amount of \$420,407.25,
payable to the Arizona Corporation Commission, less any legal offsets pursuant to A.A.C.
R14-4-308(C).

18 Page 28, lines 6-9:

19 DELETE: IT IS FURTHER ORDERED that default shall render Respondents Craig Randal
20 Munsey, Marketing Reliability Consulting, LLC, Denver Energy Exploration, LLC, and
21 Michael Lee Christopher liable to the Commission for its costs of collection and interest at the
maximum legal rate.

22 INSERT: IT IS FURTHER ORDERED that default shall render Respondents Craig Randal
23 Munsey, Marketing Reliability Consulting, LLC, Denver Energy Exploration, LLC, and
24 Michael Lee Christopher liable to the Commission for its costs of collection and interest at the
25 rate of the lessor of 10 percent per annum or at a rate per annum that is equal to one percent
26 plus the prime rate as published by the Board of Governors of the Federal Reserve System of
Statistical Release H.15 or any publication that may supersede on the date that the judgment is
entered.